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No. 335

In the Supreme Court of the United States

OCTOBER TERM, 1932

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR,
PETITIONER

v.

THE UNITED STATES OF AMERICA EX REL.
CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

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The petition for certiorari was filed August 31, 1932, and the writ was granted October 17, 1932. (R. 38.) Jurisdiction is conferred upon this Court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Secretary of the Interior erred, as a matter of law, in refusing to allow the items of respondent's claim under the War Minerals Relief Act of March 2, 1919, as amended, representing cost of machinery and equipment, salaries paid to corporate officers who were the sole stockholders of respondent corporation, and an amount paid for legal services which did not involve or contribute to the production of a war mineral.

STATUTES INVOLVED

These appear in the Appendix, *infra*, pp. 16–21.

STATEMENT

Pursuant to Section 5 of the Act of March 2, 1919, commonly known as the War Minerals Relief Act, and within the time permitted therein, the respondent filed a claim with the Secretary of the Interior for losses alleged to have been sustained in producing and in preparing to produce pyrites under the conditions specified in that Act. (R. 2, 7.) Thereafter awards totaling about $700,000 were allowed and paid to respondent, but various items of its claim were disallowed by the Secretary. (R. 30.)

On February 18, 1929, within the time limited by the Act of February 13, 1929 (*infra*, p. 20), respondent

filed in the Supreme Court of the District of Columbia a petition in the instant case for a writ of mandamus, seeking a review of the Secretary's final decision on questions of law arising in connection with the disallowance of certain items of the respondent's claim.[1] (R. 1–3, 24.)

The case was submitted upon respondent's demurrer to petitioner's answer and supplemental answer.[2] (R. 5, 6, 7, 24, 32.) The trial court sustained the demurrer and ordered that a writ of mandamus issue directing the Secretary of the Interior to proceed with the final adjustment of the disputed items of respondent's claim, and "finally to adjust those items of the claim as items allowable under the * * * act of March 2, 1919, in accordance with the amounts due as determined by him." (R. 32.)

Upon an appeal to the Court of Appeals of the District of Columbia by the Secretary of the Interior, the judgment of the lower court was affirmed. (R. 35–37.)

Thereafter the Secretary of the Interior petitioned this Court for a writ of certiorari to review the decision of the Court of Appeals as to three of the items in dispute below, and the writ was granted. The

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[1] The disallowance by the Secretary of the Interior of an item of interest included in respondent's claim was under consideration in *Work* v. *Chestatee Co.*, 267 U. S. 185, and *Wilbur* v. *Chestatee Corp.*, 284 U. S. 231, 237.

[2] It is not now disputed, as it was in the Secretary's supplemental answer (R. 25), that the exhibits appearing in the record (R. 12–23) should be considered as exhibits to the Secretary's original answer. (See R. 32.)

pertinent facts with reference to the three disputed items, as set forth in the Secretary's answer and supplemental answer, are as follows:[3]

1. *Cost of Machinery and Equipment.*—Respondent, the Chestatee Corporation, was incorporated on July 24, 1917, by G. L. Pratt and N. P. Pratt, who became its sole stockholders. (R. 27.) Prior to any request to produce a war mineral by an authorized agent of the Government, the Pratts had acquired

[3] In the brief in response to the petition for certiorari the respondent relies for the facts with respect to the disputed items principally upon what is designated in the record as "Exhibit D." (R. 13–23.) This exhibit, which is a memorandum prepared by an Assistant Commissioner of the War Minerals Relief Commission, reviews respondent's claim and recommends that the Secretary of the Interior make an additional award to the respondent, which he subsequently did. (R. 23.) This Commission was an agency set up in the Department of the Interior to aid the Secretary in performing the duties imposed upon him by Section 5 of the Act of March 2, 1919, as amended. No provision was made for its creation in the Act and its decisions were not of course binding upon the Secretary, upon whom alone the responsibility of administering the Act was imposed. If there be any inconsistency between the facts stated in Exhibit D and those which the Secretary in his answer and supplemental answer alleged were his findings, we think that the facts set forth in the answers, which, so far as well pleaded, were admitted by respondent's demurrer, should be considered as controlling. While the rule appears to be that a written instrument which is attached to a pleading as an exhibit and which constitutes the basis of the pleading is controlling where the pleading misconstrues the effect of the written instrument (*Stockton Commission Co.* v. *Narragansett Cotton Mills*, 11 F. (2d) 618, 619 (R. I.), and cases cited), this is obviously not such a case. We have therefore used the answers of the Secretary as the basis for our statement of the facts.

certain equipment and machinery at a cost of $132,-139.31, and had acquired certain tools and miscellaneous items at a cost of $16,901.07. (R. 27.)

Subsequent to a request to produce by an agent of the Government, the Pratts turned over all of this property to the respondent, which in return issued its stock to the Pratts and assumed the unpaid balance of the purchase price of the property. (R. 27.)

In adjusting respondent's war minerals claim, the Secretary of the Interior allowed and paid the item of $16,901.07 in full, because it represented the value of articles which had been entirely lost through use in respondent's mining operations. (R. 28.) He also allowed and paid the sum of $26,427.86, as the fair rental value of the equipment and machinery used in the business of the corporation. This, together with an additional award of $32,453.27, which respondent admitted in an amendment to its petition that it had received (R. 24, 28), made the total award to the respondent in connection with the item of machinery and equipment $58,481.13. The Secretary refused, however, to allow the balance of the cost of the equipment and machinery, amounting to $73,658.18, because it represented the cost of prestimulated property acquired by the respondent's sole stockholders and incorporators, and was, therefore, in his opinion, outside of the scope of the Act of March 2, 1919, as amended. (R. 28.)

(2) *Salaries.*—The Pratts withdrew from the moneys of the corporation and distributed to themselves as executive officers salaries of $25,966.67.

In passing upon respondent's claim, the Secretary took the position that respondent, because of its complete control by the Pratts, stood in a position different from that of the corporation which is at liberty to bargain freely for the services of its employees, and that he was not compelled to allow as a loss sustained by the respondent in producing pyrites, an arbitrary amount which the Pratts had seen fit to distribute to themselves as salaries. After consideration and deliberation he determined, as a matter of fact, that all the respondent was entitled justly and equitably to receive as an allowance on account of the services of the Pratts was the sum of $4,032.[4] (R. 9–10; 26–27.)

(3) *Legal Services.*—The Secretary disallowed an item of $585.75 paid by respondent for legal services. While it does not appear in any of the pleadings what the nature of those services were, the Secretary alleged in his answer (R. 10) that "he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919," and in his supplemental answer the Secretary alleged (R. 30) that he had "found as a matter of fact that legal services said to

[4] This represented a per diem of $4.00 for each of the Pratts for a period of 508 days. (R. 10.) The Secretary placed the Pratts, apparently, upon the same basis as any individual owner or partner in a mining enterprise who distributes to himself a fixed amount in the guise of salary. (See R. 22.)

have been rendered to the relator, and for which this payment was said to have been made, in no way involved the production or the preparation to produce a war mineral."

SPECIFICATION OF ERRORS TO BE URGED

The court below erred—

1. In directing the Secretary of the Interior to adjust as an item allowable under the Act of March 2, 1919, as amended, the cost of machinery and equipment which was acquired without request, demand, or other stimulation from any Government agency or officer, by persons who subsequent to April 6, 1917, and prior to November 12, 1918, and after the production of pyrites had been requested, organized and became the sole stockholders and incorporators of the respondent corporation, and who transferred to it the machinery and equipment in question in return for all the stock of the respondent corporation and the assumption by that corporation of their obligation to pay for the property.

2. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, salaries which the two incorporators and sole stockholders of the respondent corporation distributed to themselves as executive officers from the funds of the respondent, even though the Secretary already had allowed and paid respondent corporation the amount which he had determined, as a matter of fact, was in justice and equity due it on account of the value of the services of the two stockholders.

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3. In directing the Secretary to adjust as an item allowable under the Act of March 2, 1919, as amended, an amount paid by respondent for legal services which the Secretary found, as a matter of fact, did not involve the production of a war mineral.

4. In affirming the judgment against the Secretary entered by the Supreme Court of the District of Columbia.

SUMMARY OF ARGUMENT

1. The machinery and equipment in question was not acquired by the Pratts pursuant to stimulation by the Government to produce pyrites. It did not change its status as nonstimulated property by its transfer, following stimulation, to a corporation which the Pratts organized and completely dominated through stock ownership. The corporate entity rule is not applicable in this case. The Secretary treated the property in the same way as any other property acquired prior to stimulation by allowing the claimant the fair value of its use during the stimulated period. His action in determining the proper amount to be allowed on this basis involved the decision of a question of fact, which is not subject to review.

2. The Pratts, because of their complete control of the respondent corporation, were in a position to pay themselves whatever salaries they saw fit. But the Secretary was directed to administer the Act of March 2, 1919, in accordance with principles of justice and equity. He was not obliged to allow any arbitrary amount which the Pratts chose to with-

draw from the respondent's funds in the guise of salaries. He made an allowance on account of their services of the amount which he determined should justly and equitably be awarded. There being no showing in the record that there was any abuse of his discretion in passing upon this question of fact, mandamus should be refused.

3. The Secretary found, as a matter of fact, that the legal services in question did not involve or contribute to the production of a war mineral. The express terms of the Act of March 2, 1919, forbid, therefore, any reimbursement of the expenditure for these services.

ARGUMENT

I

COST OF MACHINERY AND EQUIPMENT

This is not the ordinary case of a corporation which, under stimulation to produce pyrites to aid in the prosecution of the War, went into a free and open market and purchased machinery and equipment which it thereafter used in its mining operations during the stimulation period. In such a case, if the purchaser claims that it has suffered a loss, the item is one which, undoubtedly, the Secretary may not refuse to consider. But we have here quite a different situation.

The Pratts acquired the equipment and machinery in question before they were stimulated to produce pyrites by an authorized agent of the Government. Their purchase of the equipment and machinery was,

therefore, a matter entirely outside of the scope of the Act of March 2, 1919. It was nothing more than an ordinary business transaction by the Pratts. If the Pratts had retained the equipment and machinery and proceeded to produce pyrites in their own names pursuant to a request of the Government's agent, obviously they could have made no claim under the Act for loss on account of purchase of the machinery and equipment. But they assert that the equipment and machinery acquired an allowable status when, following a request to produce pyrites, they transferred this property to the respondent corporation, even though they organized this corporation after being stimulated to produce pyrites and through their ownership of its entire capital stock completely dominated it.

We do not think the property acquired any better status after its transfer than it had before. To have so held the Secretary would have had to blind himself to the pertinent facts. It is true that he disregarded the corporate entity rule, but it is well settled that this rule does not apply where a recognition of it would promote injustice or defeat the public convenience.[5] *Eichelberger* v. *Arlington Building*, 280 Fed. 997, 999 (App. D. C.); *United States* v. *Milwaukee Refrigerator Transit Co.*, 142 Fed. 247, 255 (C. C. E. D. Wis.); *M. Lowenstein & Sons* v. *British-Ameri-*

[5] That the respondent and the Pratts did not regard their interests as distinct when the claim was filed is evident. The Secretary's answer alleges that "the claim was filed in the names of the Chestatee Pyrites and Chemical Corporation, N. P. Pratt and George L. Pratt jointly." (R. 9.)

can Mfg. Co., 300 Fed. 853, 861 (Conn.). See also *Baker Motor Vehicle Co.* v. *Hunter*, 238 Fed. 894, 899 (C. C. A. 2d); *Smith* v. *Moore*, 199 Fed. 689, 697 (C. C. A. 9th); *In re Watertown Paper Co.*, 169 Fed. 252, 257 (C. C. A. 2d). Here the Secretary was administering an Act which contained the mandate that he should make only "such adjustments and payments in each case as he shall determine to be just and equitable." It would not have been "just and equitable" for the Secretary under the facts in this case, to have treated the instant claim any differently from that of any other claimant who had acquired property prior to stimulation. And he did not treat the claim any differently. He allowed the respondent the fair value of the use of the property during the period of stimulation. Unless he committed an error of law in refusing to consider respondent's acquisition of the property as a stimulated transaction, his action in determining the proper amount to be awarded the respondent corporation for the use of its property involved the decision of a question of fact which, under the Act permitting this suit to be brought, may may not be reviewed in the courts. (Sec. 1, Act of February 13, 1929, *infra*, p. 20.)

The court below, in passing upon this item, completely ignored the real question presented by the pleadings (R. 27–29) and by the Government's assignment of errors (Assignment 2, R. 33). It made no distinction between stimulated and nonstimulated transactions, but treated the case as presenting the

same question as that involved in the decision of this Court in *Wilbur* v. *Vindicator Company*, 284 U. S. 231. The question here presented is not whether a purchaser of mining property acquired pursuant to a request by an authorized governmental agency to produce a war mineral should be reimbursed under the Act of March 2, 1919, if the property has sustained a loss in value, even though the purchaser still retains the title to it, but whether, under the facts of this case, the Secretary is required to treat a nonstimulated transaction as a stimulated one.[6]

II

SALARIES PAID TO PRATTS BY RESPONDENT

Despite the fact that the Secretary awarded to the respondent corporation on account of the services of the Pratts the amount which, after due consideration, he considered the corporation was in justice and equity entitled to receive, the decision below compels him again to consider the item, the court holding, in reliance upon the *Vindicator* decision, that the item

[6] The court below was possibly misled by the ambiguous phrasing of a statement appearing in a report to the Secretary of the Interior upon respondent's claim by an Assistant Commissioner of the War Minerals Relief Commission (R. 21), but it should be stated that the Secretary in his supplemental answer pointed out that "The statement of Assistant Commissioner Briar, referred to by the relator, that 'to allow for its purchase would be in fact to allow for the purchase of property,' had reference to 'equipment and machinery purchased before stimulation,' as is clearly shown by the context." (R. 28–29.) We think this is a fair statement of the Assistant Commissioner's view, if the paragraph in which these statements appear is read in its entirety.

is in the same category as "interest paid on borrowed money which was lost in the enterprise." (R. 36.)

In so holding, the court below evidently misunderstood the question at issue. This is not a case where the salary paid to an officer of a corporation was fixed as the result of a free and untrammeled course of dealing. Here the Pratts, because of their complete control of the respondent corporation, were in a position to pay themselves any sums as salaries which they saw fit. But the Secretary was certainly not required in administering an Act which directed him to proceed according to principles of equity and justice to make an award on any such basis. Dissimilar only in its mechanics, the situation here presented does not differ in any essential respect from the claim of an individual owner of, or a partner in, a mining enterprise who takes out of the business whatever amount in the guise of salary may suit his desire. In his answers below the Secretary alleged that after due consideration he determined that, in justice and equity, all that the respondent was entitled to receive on account of the Pratts' services was the sum of $4,032. (R. 9–10; 26–27.) This was a finding of fact by the Secretary, and the exercise of his judgment and discretion in that respect may not, we submit, be controlled by mandamus unless clearly arbitrary or capricious. (See *Wilbur* v. *Vindicator Co.*, *supra*, p. 237.) In the absence of anything in the record showing the contrary, it must, of course, be presumed that the Secretary exercised his discretion fairly and reasonably.

III

LEGAL EXPENSES PAID BY RESPONDENT

The last item in dispute involves a payment of $585.75 made by respondent for legal services. The nature of these services is nowhere disclosed in the record. But the Secretary alleges in his supplemental answer that he found as a matter of fact that the services in question "in no way involved the production or the preparation to produce a war mineral," and that "such services in no way contributed to the production of pyrites" (R. 30), and in his original answer he alleges that "he is informed and believes that the legal services represented by the payment aforesaid, as a matter of fact, were rendered in connection with a matter which had no relation to a production or a preparation to produce pyrites by the petitioner, and accordingly were not within the terms of the act of March 2, 1919" (R. 10). The Act of March 2, 1919, expressly recognizes that reimbursement may not be made unless the alleged loss occurs "by reason of producing or preparing to produce" a war mineral. (Sec. 1; *infra*, p. 16.) The error of the court below is in failing to take into consideration the specific finding of fact by the Secretary that the legal services for which respondent paid did not involve or contribute to the production of pyrites or any other war mineral. (See R. 36.) There is nothing in the *Vindicator* decision, to which that court refers, which recognizes that any other type of loss is compensable.

While there are allegations in the Secretary's answers which indicate that he may have been of the opinion that legal expenses are not, under any circumstances, reimbursable, we do not deem it necessary to discuss that question, in view of the Secretary's specific finding of fact that the services in question did not involve "the production or the perparation to produce war mineral."

CONCLUSION

The judgment of the Court of Appeals should be reversed and the case remanded to the Supreme Court of the District of Columbia with directions to dismiss the petition for mandamus.

Respectfully submitted.

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NOVEMBER, 1932.

APPENDIX

STATUTES INVOLVED

Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all payments and expenses incurred by said Secretary, including personal services, traveling and sub-

sistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate at-

tempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war; and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further*, That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further*, That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant, the then market value of any ores or minerals on hand belonging to the claimant, and also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: "*Provided*, That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts."

Act of June 7, 1924, c. 327, 43 Stat. 634:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to enable the Secretary of the Interior to lawfully pay adjudicated claims arising under the provisions of the so-called War Minerals Relief Act,

entitled, "An Act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," approved March 2, 1919, as amended, the limitation in said Act on the aggregate amount to be disbursed thereunder in the payment of said claims is hereby repealed.

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits

and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judgment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

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